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Maternity Benefits and Workplace Equality in India

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In this article, we will analyze the issue of maternity benefits to working women in Indian scenario and its conflict with corporate interests, and measures that can protect the rights of both women and organizations.

In the post-industrial revolution era, the discourse revolving around the gendered construct of organizations is replete with the issue of maternity benefits, corporate interests and workforce efficiency, shifts in the social roles of both sexes and government's commitment towards creating a gender egalitarian society. While maternity benefits have gained a recognizance as women's rights in most of the developed countries, India is still lagging behind in formulating a policy structure that aims to encourage women participation in the workforce and reconstruct the sexual division of labour.

The Indian Scenario

- **Gap in workforce participation:** In the India Development Report by the World Bank, India has been ranked 120th among 131 countries in the female labour force participation rate. In India, the participation of women was just 27% compared to China and Brazil where it was between 65-70%. Only 6.5% of Indian women are in the formal sector.
- **Gender Inequality:** In the "Global Gender Gap Report" (2017) released recently by the World Economic Forum (WEF), India has been ranked a low 108 out of 144 countries on the gender equality scale, slipping from 87 last year.
- **Inequality in pay:** According to a recent report based on the review of FY17 annual reports, India's women directors are not as well paid as their male counterparts. In the 30 Sensex companies, women directors on an average were paid 46 per cent less than men.
- **Exclusion of domestic labour:** The household work done by women is not only unpaid but is also 'invisible' from national statistics and GDP. Also, the assistance extended by women to their male producers in agriculture or small business goes uncalculated.

- Apart from this, women in India face issues like **workplace harassment and subordination, undervaluation, additional baggage of household responsibilities and dismal working conditions**. The situation is even more precarious for women working in the informal sector.

The Legal Outlook

Though rife with inadequacies, the Indian legal system provides certain assurance of rights of working women, such as

1. **Maternity Benefit Amendment Act, 2017** which was a revision of the Maternity Benefit Act, 1961, provides for maternity leaves, creche facility at the workplace.
2. **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013** has provisions regarding grievance redressal and providing a safe working environment.
3. **The Factories Act, 1948:** The Factories Act is a legislation to secure to the workers employed in a factory, health, safety, welfare, proper working hours, leave and other benefits. The Factories Act also has exclusive provisions for women workers.
4. **The Equal Remuneration Act, 1976:** According to Article 39 of our constitution which directs that States shall, in particular, have policies towards securing equal pay for equal work for both men and women. Under the Equal Remuneration Act, employers shall pay equal remuneration to its male and female employees who are carrying out the same or similar work and cannot discriminate between men and women while recruiting
5. **Shops and Establishments Acts:** The State Governments enact their respective shops and establishments act, regulates the working conditions of employees in a shop or commercial establishment. They provide for various provisions including provisions pertaining to termination, leave entitlement, and working conditions and has special provisions for women as well.

The Maternity Benefit Amendment Act, 2017 and Its Repercussions

- The Maternity Benefit Amendment Act increases women's leave entitlements from 12 to 26 weeks. Of these, up to eight weeks can be taken pre-delivery.
- Enterprises with 50 or more employees must also provide crèches and allow the mother four crèche visits, daily.
- Women with two or more children get reduced entitlements.
- The costs of these benefits are to be borne solely by employers.

Despite being an attempt to foster women participation in the workforce, these provisions may backfire at the job prospects of women.

- **Job losses:** According to a report by TeamLease, it may lead to some 11 to 18 lakh job losses for women in 2018-19 alone for the 10 sectors studied, and up to 1.2 crore job losses across all sectors.
- **Reluctance of employers in hiring:** Various studies indicate that employers prefer to hire a young man rather than a young woman due to the high costs of maternity leave and are wary of hiring women of childbearing age. After a similar law was passed in Spain, employers were less likely to hire women of childbearing age, to promote them, and more likely to let them go, relative to men.
- **Discrimination in promotions:** Young women are often not considered for higher positions or positions that require full-time commitments, as employers think that they may compromise with work for family duties.

What Needs to Be Done

- **Extending Paternity Leaves:** Child Care should not be treated solely as women's responsibility and the difference in maternity and paternity leaves should be minimized. This will not disincentivize the recruitment of women and will create a level playing field for men and women in both work and social areas.
- **Cost sharing by the government:** Companies are less likely to discriminate against women if the government pitches in. The 2018 ILO report on Care Work and Care Jobs emphasises the need for government support up to at least two-thirds of the costs of maternity benefits, under **ILO Convention 183**.
- **Focus on quality and coverage of creches:** Providing better facilities, nutrition and learning environment for children up to six years should be the prime concern of creches, which is lacking in our Integrated Child Development Services. The government should step in to share this responsibility with the private sector. Pooling of resources by SMEs is yet another viable option for creating a good creche. This will significantly increase women's work participation (for instance, in Japan).
- **Flexibility in work time for both sexes:** This will help in maintaining the work-life balance. In western countries, companies which allow such flexibility find it increases worker productivity, and these flexibilities are used by both sexes.
- **Regulations regarding informal sector:** The 2017 Act does not cover women working in the informal sector which is 93.5% of total women. It is important that the government pays attention to them and comes up with legislation that protects the rights of women working in the informal sector.
- **Making organizations conducive to women:** We need to include women from diverse backgrounds and take into account different occupational settings in the process of transforming organizational structures through feminist values of caring, nurturing, and advocacy on behalf of women.

It is high time that society and the government adopt a comprehensive approach towards encouraging women to balance their work and motherhood and consider childbearing as a collective responsibility rather than a burden to be borne by women at the cost of their career growth. In this regard, it is important to stop the practice of equating maternity leaves with benefits and using metaphors that compare pregnancy with disability.